

# Request for Proposals



Department of Executive Services  
Finance and Business Operations Division  
**Procurement and Contract Services Section**  
206-263-9400 TTY Relay: 711

**ADVERTISED DATE: APRIL 10, 2012**

Request for Proposals (RFP) Title: **COBRA, Retiree Medical, and Flexible Spending Account (FSA)  
Third Party Administration**

RFP Number: **1082-12-CFR**

Due Date: **May 31, 2012 - 2:00 p.m.**

Buyer: **Cathy Robinson, [cathy.robinson@kingcounty.gov](mailto:cathy.robinson@kingcounty.gov), 206-263-9311**

Alternate Buyer: **Victoria Nakamichi, [vicki.nakamichi@kingcounty.gov](mailto:vicki.nakamichi@kingcounty.gov),  
206-263-9299**

## Pre-proposal Conference:

A pre-proposal conference to discuss questions related to this RFP will be held on May 3, 2012, at the Chinook Building located at 401 Fifth Ave., Seattle, WA 98104 on the 3<sup>rd</sup> Floor in conference room 328-Dahila at 10:30 a.m. Pacific Local Time. A bridge conference line is provided. That number is 206-205-0999.

Sealed Proposals are hereby solicited and will **only** be received by:

King County Procurement Services Section  
Chinook Building, 3rd Floor  
401 Fifth Avenue  
Seattle, WA 98104

Office Hours: 8:00 a.m. – 5:00 p.m.  
Monday - Friday

**We acknowledge that all Addenda issued for this RFP have been examined as part of the proposal documents.**

Company Name

Address

City/State /Postal Code

Signature

Authorized Representative / Title

Email

Phone

Fax

Contact Name:

Phone

Email

Prime Proposer SCS / DBE Certification number (if applicable)

This Request for Proposal will be provided in alternative formats such as Braille, large print, audiocassette or computer disk for individuals with disabilities upon request.

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COBRA, Retiree Medical, and Flexible Spending Account  
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## DEFINITION OF WORDS AND TERMS APPLICABLE ONLY TO INSTRUCTION OF THE RFP

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the County during the Proposal period and prior to contract award.

Best and Final Offer: Best and Final Offer shall consist of the Proposer's revised proposal and any supplemental information requested during the evaluation of Proposals. In the event of any conflict or inconsistency in the items submitted by the Proposer, the items submitted last govern.

Competitive Range: The Competitive Range consists of the Proposers that have a reasonable chance of selection for contract award. The Proposal Evaluators (PE) shall conduct the initial evaluation of the proposals considering price and Evaluation Factors established in the RFP. The Buyer and Project Manager/PE together shall compare the evaluations and determine the Competitive Range. The Competitive Range may be reduced after the evaluation of additional information, Best and Final Offers and negotiations.

Criteria, Evaluation Criteria or Evaluation Factors: The elements cited in the RFP that the County shall examine to determine the Proposers understanding of the requirements; technical, business and management approach; key personnel; qualification and experience of the Proposer; potential for successfully accomplishing the Contract; risk allocation and the probable cost to the County.

Days: Calendar days.

Proposal Evaluators (PE): Team of people appointed by the County to evaluate the proposals, conduct discussions, call for Best and Final Offers, score the proposals and make recommendations.

Proposer: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a proposal to perform the Work.

RFP: Request for Proposals, also known as the solicitation document.

Reference Documents: Reports, Specifications, and drawings which are available to Proposers for information and reference in preparing proposals but not as part of this Contract.

## **SECTION 1 PROPOSAL PREPARATION**

### **1.1 Proposal Submission**

Proposers are encouraged to use recycled paper in the preparation of additional documents submitted with this solicitation, and shall use both sides of paper sheets where practicable.

Sealed proposals shall contain all required attachments and information and be submitted to King County (hereinafter "County") no later than the date, time and place stated on the front of this RFP or as amended. The proposals shall show the title and number, the due date specified, and the name and address of the Proposer on the face of the envelope. Proposers are cautioned that failure to comply may result in non-acceptance of the proposal. The Proposer accepts all risks of late delivery of mailed proposals or of misdelivery regardless of fault. Proposals properly and timely submitted will be publicly opened.

Proposals will only be accepted from Contractors able to complete the delivery of goods or services described in the specifications. Joint ventures shall submit one proposal for the team, with accompanying proof of the joint venture agreement.

If a company chooses not to submit a proposal, the County requests the company advise the Buyer by email if they desire to remain listed for the subject of this RFP and state the reason they did not submit a proposal.

### **1.2 Electronic Commerce and Correspondence**

King County is committed to reducing costs and facilitating quicker communication to the community by using electronic means to convey information. As such, most Invitations to Bid, Requests for Proposal, and Requests for Qualifications as well as related exhibits, appendices, and issued addenda can be found on the King County Internet Web Site, located at <http://www.kingcounty.gov/procurement> Current bidding opportunities and information are available by accessing the "**Solicitations**" tab in the left hand column.

King County Procurement Services features an **Online Vendor Registration (OVR)** program that permits vendors, consultants and contractors to register their business with the County. This OVR system allows interested parties to either directly register their firm by creating a unique User ID, or to visit the website as a guest. Information regarding bid documents will be available to all users; however, site visitors accessing the site as a guest will not be able to document their interest in a project or add their name to the document holder's list. They will receive no automatic notification of issued addenda. As such, the County encourages full registration in order to directly communicate with document holders regarding any issued addenda or other important information concerning the solicitation.

After submittals have been opened in public, the County will post a listing of the businesses submitting proposals, and later, any final award determination.

Full information on vendor registration is available at the website.

### **1.3 Late Proposals**

Proposals, modifications of proposals, received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered.

### **1.4 Cancellation of RFP or Postponement of Proposal Opening**

The County reserves the right to cancel this RFP at any time. The County may change the date and time for submitting proposals prior to the date and time established for submittal.

## 1.5 Proposal Signature

Each proposal shall include a completed Proposal response form, the first page of this document, signed by an authorized representative of the Proposer.

## 1.6 Addenda

If at any time, the County changes, revises, deletes, clarifies, increases, or otherwise modifies the RFP, the County will issue a written Addendum to the RFP.

## 1.7 Questions and Interpretation of the RFP

No oral interpretations of the RFP will be made to any Proposer. All questions and any explanations must be requested in writing and directed to the Buyer no later than **five (5) Days** prior to the due date specified in the solicitation. Oral explanations or instructions are not binding. Communications concerning this RFP with other than the listed Buyer or Procurement staff may cause the Proposer to be disqualified. Any information modifying a solicitation will be furnished to all Proposers by addendum. **Communications concerning this proposal, with other than the listed Buyer may cause the Proposer to be disqualified.**

## 1.8 Schedule

Day/Month/Year	Event
<u>April 10, 2012</u>	Public announcement of Request for Proposals
<u>April 30, 2012</u>	Preproposal questions due, in writing
<u>May 3, 2012</u>	Preproposal conference (time and location)
<u>May 18, 2012</u>	Last day to submit questions
<u>May 31, 2012</u>	Proposals due
<u>June 1, 2012</u>	*Begin Evaluation of Proposals
<u>Early July 2012</u>	*Begin Interviews/Demonstrations/conduct Site Visits if applicable
<u>Late July 2012</u>	*Begin Negotiations
<u>Early August 2012</u>	*Execute Contract

\*NOTE: Dates preceded by an asterisk are estimated dates. Estimated dates are for information only.

## 1.9 Pre-Proposal Conference

A pre-proposal conference will be held at the time, date and location indicated on the cover page of the RFP. All prospective Proposers are strongly encouraged to attend. The intent of the pre-proposal conference is to assist the Proposers to more fully understand the requirements of this RFP. Proposers are encouraged to submit questions in advance to enable the County to prepare responses; these questions should be E-mailed to the Buyer. Questions will be encouraged during the pre-proposal conference also.

## 1.10 Examination of Proposal and Contract Documents

The submission of a proposal shall constitute an acknowledgement upon which the County may rely that the Proposer has thoroughly examined and is familiar with all requirements and documents pursuant with the RFP, including any addenda and has reviewed and inspected all

applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Proposer to comply with the above requirement shall in no way relieve the Proposer from any obligations with respect to its proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFP.

#### **1.11 Cost of Proposals and Samples**

The County is not liable for any costs incurred by Proposer in the preparation and evaluation of proposals submitted. Samples of items required must be submitted to location and at time specified. Unless otherwise specified, samples shall be submitted with no expense to the County. If not destroyed by testing, samples may be returned at the Proposer's request and expense unless otherwise specified.

#### **1.12 Modifications of Proposal or Withdrawal of Proposal Prior to Proposal Due Date**

At any time before the time and date set for submittal of proposals, a Proposer may submit a modification of a proposal previously submitted to the County. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal.

Proposals may be withdrawn by written notice received prior to the exact hour and date specified for receipt of proposals. A proposal also may be withdrawn in person by a Proposer or authorized representative provided their identity is made known and they sign a receipt for the proposal, but only if the withdrawal is made prior to the exact hour and date set for receipt of proposals. All requests for modification or withdrawal of proposals, whether in person or written, shall not reveal the amount of the original proposal.

#### **1.13 Proposal Withdrawal After Public Opening**

Except for claims of error granted by the County, no Proposer may withdraw a proposal after the date and time established for submitting proposals, or before the award and execution of a Contract pursuant to this RFP, unless the award is delayed for a period exceeding the period for proposal effectiveness.

Requests to withdraw a proposal due to error must be submitted in writing along with supporting evidence for such claim for review by the County. Evidence must be delivered to the County within two (2) Days after request to withdraw. The County reserves the right to require additional records or information to evaluate the request. Any review by the County of a proposal and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the County to discover any other proposal error or mistake, and the sole liability for any proposal error or mistake rests with the Proposer.

#### **1.14 Error and Administrative Corrections**

The County shall not be responsible for any errors in proposals. Proposers shall only be allowed to alter proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by the County.

The County reserves the rights to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors.



## **1.15 Proposal Content Requirements**

- A. The proposal shall contain the following items and follow the sequence outlined below:

### **Sec. 1 & 2 Instructions and Information about the RFP Process**

Cover sheet with Proposer's Signature

Compliance Forms:

- Certificate of Lobbying Activities (Exhibit N)
- Internal Revenue Service Form W-9 \*

\*If not on file with the County within the past two years.

Compliance forms are available for download at

<http://www.kingcounty.gov/procurement/forms>, Goods and Services web page.

### **Sec. 3 Scope of Work and Proposal Requirements**

See Section 3.11 Proposal Content Requirements

#### **Attachment A Contract:**

Identify any exceptions to terms and conditions and attachments with a signed letter from an attorney or authorized representative

- B. Submit copies of the proposal and attachments as outlined in Section 3.11, B Proposal Content Requirements.

## **1.16 Compliance with RFP Terms, Attachments and Addenda**

- A. The County intends to award a Contract based on the terms, conditions, attachments and addenda contained in this RFP. Proposers shall submit proposals, which respond to the requirements of the RFP.
- B. Proposers are strongly advised to not take exceptions to the terms, conditions, attachments and addenda; exceptions may result in rejection of the proposal. An exception is not a response to a proposal requirement. If an exception is taken, a 'Notice of Exception' must be submitted with the proposal. The 'Notice of Exception' must identify the specific point or points of exception and provide an alternative.
- C. The County reserves the right to reject any proposal for any reason including, but not limited to, the following:
- Any proposal, which is incomplete, obscure, irregular or lacking necessary detail and specificity;
  - Any proposal that has any qualification, limitation, exception or provision attached to the proposal;
  - Any proposal from Proposers who (in the sole judgment of the County) lack the qualifications or responsibility necessary to perform the Work;
  - Any proposal submitted by a Proposer which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
  - Any proposal, from Proposers who are not approved as being compliant with the requirements for equal employment opportunity; and

- Any proposal for which a Proposer fails or neglects to complete and submit any qualifications information within the time specified by the County.
- D. The County may, at its sole discretion, determine that a proposal with a 'Notice of Exception' merits evaluation. A proposal with a 'Notice of Exception' not immediately rejected may be evaluated, but its competitive scoring shall be reduced to reflect the importance of the exception. Evaluation and negotiation shall only continue with the Proposer if the County determines that the proposal continues to be advantageous to the County.
- E. In consideration for the County's review and evaluation of its proposal, the Proposer waives and releases any claims against the County arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation and presentation of proposals submitted in response to this RFP.
- F. Proposals shall address all requirements identified in this RFP. In addition, the County may consider proposal alternatives submitted by Proposers that provide cost savings or enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in the County's best interests. Proposal alternatives shall be clearly identified.

#### **1.17 Acceptance of Contract, Attachments and Addenda**

Proposer(s) shall review Attachment A Contract, and all its attachments, and submit a signed letter by their attorney or authorized legal representative stating they intend to comply with all the terms and conditions. The signed letter shall be submitted with the proposal.

If there are exceptions taken to the terms and conditions in Attachment A Contract and any of its attachments, the Proposer's attorney or authorized legal representative shall sign an exception letter describing reasoning for the exceptions and include the exception letter and Attachment A Contract as an attachment to the proposal, identifying the exceptions and proposed changes. All proposed changes shall be tracked in Attachment A Contract using the tracking changes feature in Microsoft Word®.

The project schedule is such that it requires a very efficient proposal review and negotiation period. It is very important that any possible roadblocks or issues the Proposer may have with the terms and conditions are identified during the proposal process and resolved prior to proceeding with the Contract negotiations.

#### **1.18 Forms Required before Contract Signing**

- The Proposer shall submit within five (5) Days of notification from the County the insurance certificate and endorsement meeting the levels of coverage set forth in this RFP.

#### **1.19 Collusion**

If the County determines that collusion has occurred among Proposers, none of the proposals from the participants in such collusion shall be considered. The County's determination shall be final.

#### **1.20 Proposal Price and Effective Date**

- A. The proposal price shall include everything necessary for the prosecution and completion of Work under the Contract including but not limited to furnishing all materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and

service, except as may be provided otherwise in this RFP. Proposed Prices shall include all freight charges, FOB to the designated delivery point. Washington State sales/use taxes and Federal excise taxes shall not be included in the proposal price. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The County is exempt from Federal excise taxes. All other government taxes, duties, fees, royalties, assessments and charges shall be included in the Proposal price.

- B. In the event of a discrepancy between the unit price and the extended amount for a proposal item, the County reserves the right to clarify the Proposal.
- C. The proposal shall remain in effect for 90 Days after the proposal due date, unless extended by agreement.

### **1.21 Procedure When Only One Proposal Is Received**

If the County receives a single responsive, responsible proposal, the County may request an extension of the proposal acceptance period and/or conduct a price or cost analysis on such proposal. The Proposer shall promptly provide all cost or pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single proposal; the County reserves the right to reject such proposal or any portion thereof.

### **1.22 Protest Procedures**

King County has a process in place for receiving protests based upon the RFP or contract awards. The protest procedures are available at <http://www.kingcounty.gov/procurement/faq>, Suppliers web page.

### **1.23 Supported Employment Program**

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your proposal. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-296-5268.

## **SECTION 2 PROPOSAL EVALUATION AND CONTRACT AWARD**

### **2.1 Proposal Evaluation**

- A. The County will evaluate proposals using the criteria set forth in this RFP. If deemed necessary, written and/or oral discussions, site visits or any other type of clarification of proposal information may be conducted with those Proposers whose proposals are found to be potentially acceptable. Identified deficiencies, technical requirements, terms and conditions of the RFP, costs or prices, and clarifications may be included among the items for discussion. The discussions are intended to give Proposers a reasonable opportunity to resolve deficiencies, uncertainties and clarifications as requested by the County and to make the cost, pricing or technical revisions required by the resulting changes. In addition, the County may request additional business and administrative information.
- B. The County may find that a Proposer appears fully qualified to perform the Contract or it may require additional information or actions from a Proposer. In the event the County determines that the proposal is not within the Competitive Range the County shall eliminate the proposal from further consideration.
- C. The evaluation of Proposers' proposals and additional information may result in successive reductions of the number of proposals that remain in the Competitive Range. If applicable to the procurement, the firms remaining in the Competitive Range may be invited to continue in the proposal evaluation process, and negotiations.
- D. Upon completion of discussions, the County may issue to all remaining potentially acceptable Proposers within the competitive range a request for Best and Final Offers. The request shall include notice that discussions are concluded, an invitation to submit a revised proposal with a Best and Final Offer, and a new submittal date and time.
- E. The County may enter negotiations with one or more Proposers to finalize Contract terms and conditions. Negotiation of a Contract shall be in conformance with applicable federal, state and local laws, regulations and procedures. The objective of the negotiations shall be to reach agreement on all provisions of the proposed Contract. In the event negotiations are not successful, the County may reject proposals.
- F. The County reserves the right to make a Contract award without written and/or oral discussions with the Proposers and without an opportunity to submit Best and Final Offers when deemed to be in the County's best interests. Contract award, if any, shall be made by the County to the responsible Proposer whose proposal best meets the requirements of the RFP, and is most advantageous to the County, taking into consideration price and the other established evaluation factors. The County is not required to award a Contract to the Proposer offering the lowest price. The County shall have no obligations until a Contract is signed between the Proposer and the County. The County reserves the right to award one or more contracts as it determines to be in its best interest.

### **2.2 Responsive and Responsible**

#### **Responsive**

The County will consider all the material submitted by the Proposer, and other evidence it may obtain otherwise, to determine whether the Proposer is in compliance with the terms and conditions set forth in this RFP.

## Responsible

In determining the responsibility of the Proposer, the County may consider:

- the ability, capacity and skill to perform the Contract and provide the service required;
- the character, integrity, reputation, judgment and efficiency;
- financial resources to perform the Contract properly and within the times proposed;
- the quality and timeliness of performance on previous contracts with the County and other agencies, including, but not limited to, the effort necessarily expended by the County and other agencies in securing satisfactory performance and resolving claims;
- compliance with federal, state and local laws and ordinances relating to public contracts;
- other information having a bearing on the decision to award the Contract.

Failure of a Proposer to be deemed responsible or responsive may result in the rejection of a proposal.

### **2.3 Financial Resources and Auditing**

The Proposer shall submit proof of adequate financial resources that would be available to the Proposer for the prosecution and completion of the work as required. Required financial information may include, but not be limited to, the following:

- A. Audited financial statements (balance sheets, statements of income and stockholders' equity, and statements of cash flows) for each of the most recently completed five fiscal years, including notes to financial statements, independent auditors' reports, annual reports to stockholders, and SEC Form 10K reports (for publicly held corporations).
- B. Certification by the chief financial officer or the Proposer's independent auditor stating that the Proposer has adequate financial resources for the prosecution and completion of the work called for hereunder.
- C. The names, addresses, e-mail addresses, telephone and fax numbers of at least one contact person from the Proposer's principal financial or banking organization and the Proposer's independent auditor. The contact persons shall be duly authorized by the Proposer to provide information and discuss the adequacy of the Proposer's financial resources. Upon the County's request, the Proposer shall provide written authorization permitting the County or its designee access to information documenting the adequacy of the Proposer's financial resources.
- D. A current copy of the Proposer's Dun and Bradstreet report(s), if requested by the County. King County reserves the right to audit the Contractor throughout the term of this contract to assure the Contractor's financial fitness to perform and comply with all terms and conditions contained within this contract. King County will be the sole judge in determining the Contractor's financial fitness in carrying out the terms of this contract.

## 2.4 Evaluation Criteria and Proposal Scoring

Each proposal has a total possible score of 200 points with the points assigned as follows:

Evaluation Criteria and Proposal Scoring	
Category	Points
<b>Overall COBRA, Retiree Medical and FSA Plan Administration</b> Evaluation of proposer's overall capability to administer the COBRA, Retiree Medical and Flexible Spending Accounts (FSA) based on demonstrated experience. Includes implementation and transition to ongoing operations, processing of eligibility and new enrollees, management of customer service and appeals, tracking and reporting of participation, integration with outside vendors, communications capabilities and strength of the account management team and overall organizational experience. The plan administration scores will include an evaluation of each proposer's capability to administer the plans as well as an evaluation of the proposer's capability to administer other plans or changes in the current plans that may be bargained with the county's labor unions and implemented during the term of the agreement.	<b>50</b>
<b>Price</b> Evaluation of the overall competitiveness of proposer's price proposal. The price scores will include an evaluation of the proposed performance guarantees.	<b>50</b>
<b>Member Services</b> Evaluation of proposed member services for each plan, including the proposer's capability to allow for customization of enrollment materials and other communication material. Evaluation will also include proposer's online and technical capabilities, customer service support approach and methodology, and the demonstrated ability to rapidly incorporate changes in laws and regulations as they relate to the plans and plan administration.	<b>30</b>
<b>Administration of Individual Plans</b> Evaluation of proposer's responses to the Proposal Specifications for each individual plan included in this RFP including the ability to accommodate the unique requirements of King County and its medical plans and wellness program as well as the ability to administer benefit tiers within a single plan.	<b>40</b>
<b>Total possible Written</b>	<b>170</b>
<b>Finalist Interviews</b> Finalist interviews will be conducted with proposers which receive the highest overall scores from the other four evaluation categories listed above. The county may elect to interview all of the proposers who respond to the RFP or only those proposers who are within the competitive range following the evaluation and scoring of written proposals. Proposers will receive questions in advance of the interviews and will be given time for presentations. All elements of the submitted proposals may be topics for discussion during finalist interviews. The proposal evaluation team may also use finalist interviews to pose questions related to prior experiences working with proposers or publicly available information about proposers.	<b>30</b>
<b>Total Evaluation</b>	<b>200 points</b>


## **2.5 Public Disclosure of Proposals**

This procurement is subject to the Washington Public Disclosure Act, RCW (Revised Code of Washington) 42.17.250 et seq. Proposals submitted under this RFP shall be considered public documents unless the documents are exempt under the public disclosure laws. After a decision to award the contract has been made, the proposals shall be available for inspection and copying by the public.

If a Proposer considers any portion of its proposal to be protected under the law, the Proposer shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the County determines that the material is not exempt from public disclosure law, the County will notify the Proposer of the request and allow the Proposer ten (10) Days to take whatever action it deems necessary to protect its interests. If the Proposer does not take such action within said period, the County will release the portions of the proposal deemed subject to disclosure. By submitting a proposal, the Proposer assents to the procedure outlined in this subsection and shall have no claim against the County on account taken under such procedure.

## PROPOSAL LABEL

Complete the form below (or reasonable facsimile) and affix to the exterior lower left hand corner of the submission envelope(s), box(es), etc.

<b>U R G E N T – SEALED PROPOSAL ENCLOSED</b> <b>Do Not Delay – Deliver Immediately</b>	
 <b>King County</b>	King County Procurement & Contract Services Section Chinook Building, 3 <sup>rd</sup> FL CNK-ES-0340 401 Fifth Avenue Seattle, WA 98104
<b>Proposal Number.</b>	<b>1082-12-CFR</b>
<b>Proposal Title</b>	COBRA, Retiree Medical, and Flexible Spending Account (FSA) Third Party Administration
<b>Opening Date</b>	
<b>Firm Name</b>	



## SECTION 3 INTRODUCTION AND REQUIREMENTS

The purpose of this Request for Proposal (RFP) is to select a proposer who will administer the King County's COBRA, Retiree Medical Plan, and Medical and Dependent Care Flexible Spending Account (FSA) programs. By definition the COBRA and Retiree Medical plans include Health, Vision and Retiree Dental plans.

The county will select a single qualified proposer to administer the full scope of services contained in this RFP. The successful proposer shall provide excellent programs and services and the expertise and capability to administer complex medical and FSA programs including integration with outside vendors.

The scope of services included in this RFP and detailed later in this document are as follows:

1. **COBRA Plan Administration** – includes the administration of tiered levels of benefits resulting in multiple premium levels for a single plan.
2. **Retiree Medical Plan Administration** – includes the administration of tiered levels of benefits resulting in multiple premium levels for a single plan.
3. **Administration of Medical and Dependent Care Assistance FSA Plans** – includes on-line self-service capabilities, reporting capabilities and forfeiture accounting.
4. **Integration with outside vendors** – includes referrals to outside vendors administering the medical plans and the County's wellness assessment vendor.

### 3.1 King County Background

King County is a general government public entity encompassing Seattle, Bellevue, and a number of smaller suburban cities in Washington State. King County provides regional services including courts and related legal services, public health services, County jail, records and elections, property tax appraisals, regional parks and recreational facilities, public transit and wastewater treatment. In unincorporated communities, King County also provides police protection, animal control, land-use regulation, roads and local parks.

### 3.2 King County - Eligible Population

The County has approximately 14,000 benefits-eligible employees and an additional 18,500 covered family members. Employees who are benefits eligible are enrolled in medical coverage automatically receive dental and vision coverage. Eligible family members enrolled by the employee for medical benefits receive the same medical coverage the employee elects.

The County is highly unionized (83%) and has 73 union contracts across 99 bargaining units. Benefits are bargained by coalition in three-year cycles through the Joint Labor Management Insurance Committee (JLMIC), a union coalition that labor agreed will represent them in bargaining. The County and the JLMIC may elect to extend negotiated benefits for up to five years. Benefits bargained with the JLMIC apply to all County employees with a number of exceptions.

The King County Police Officer's Guild negotiates benefits for the King County Deputy Sheriffs independently resulting in some administrative differences described later in this RFP.

There are several populations, including early retirees, COBRA enrollees, part time transit operators, and several smaller bargained units who are eligible to participate in the Healthy

Incentives<sup>SM</sup> program outside of the incentive plan. The specific business rules which apply to these populations are outlined later in this RFP.

King County reserves the right to modify the eligible population for participation County's benefit plans or modify the participation requirements. Modifications may be the result of collective bargaining or county strategy. Modifications to the eligible population may include exclusion from participation or modified participation rules based on bargaining unit or health plan selection.

### 3.3 King County – Demographics

The chart below provides demographic profile of the King County employees and former employees enrolled in the benefit programs. The numbers below represent employees only for Active Participants and former employees and their covered dependents for the Retiree Medical Plan and COBRA Participants.

<u>Plan</u>	<u>Administrator</u>	<u>Active Participants</u>	<u>Retiree Medical Plan</u>	<u>COBRA Participants</u>
KingCare <sup>SM</sup> Gold	Regence Blue Shield	6,774	125	91
KingCare <sup>SM</sup> Silver	Regence Blue Shield	1,354	12	13
KingCare <sup>SM</sup> Bronze	Regence Blue Shield	583	37	16
SmartCare Connect <sup>SM</sup> Gold	Group Health	2,371	85	65
SmartCare Connect <sup>SM</sup> Silver	Group Health	765	11	15
Smart Care Connect <sup>SM</sup> Bronze	Group Health	299	31	12
Deputy Sheriffs Plan Gold	Aetna	462	16	2
Deputy Sheriffs Plan Silver	Aetna	91		
Deputy Sheriffs Smart Care Connect <sup>SM</sup> Gold	Group Health	42	5	0
Deputy Sheriffs Smart Care Connect <sup>SM</sup> Silver	Group Health	16	2	0
Washington Dental Services	WDS	13,066	474	268
Vision Service Plan	VSP	13,066	263	286

### 3.4 King County Health Plans

King County health plan options include medical, dental and vision benefits. The plans are self-insured and self-funded. The County has two primary medical plans for its employees, KingCare<sup>SM</sup> a PPO plan and SmartCare Connect<sup>SM</sup> an HMO option. Benefit eligible employees are defaulted to the KingCare<sup>SM</sup> plan if they fail to make a plan election upon attaining benefit

eligibility. Benefit eligible employees enrolled in a medical plan automatically receive dental and vision benefits. Employees can enroll dependents in any one or all three health plan options; medical, dental and/or vision.

There are three distinct groups of county employees that utilize KingCare<sup>sm</sup> and SmartCare Connect<sup>sm</sup> as the medical plan option. These include the Regular Employee Plan, the Part-Time Transit Operator (PTTO) plan (consisting of the Partial Benefits Plan and the Full Benefits Plan) and the Deputy Sheriff Plan. The Regular Employee Plan participants are all full-time or part-time benefit eligible employees. With the exception of the PTTO plan, at this time King County does not require active employees to contribute to premium costs for coverage for themselves or family members. Future collective bargaining may result in premiums for employees.

Employees enrolled in the PTTO Partial Benefits Plan pay premiums for the health plan benefits and can elect not to enroll in benefits. The Deputy Sheriff Plan has different out-of-pocket expense and co-insurance levels. With the exception of Part-Time Transit Operators (PTTO) in the Partial Benefits Plan, active employees do not, at this time, pay premiums for their health plan benefits.

There are approximately 365 PTTO employees eligible for the Partial Benefits Plans who can purchase medical, dental, and vision coverage separately with 169 enrolled. Rates in the Partial Benefits Plan are tiered based on family members enrolled and the benefit plan elected, i.e. employee only, employee plus spouse, employee plus children or employee plus family. PTTO employees enrolled in the Full Benefits plan do not pay premiums.

There are approximately 553 active employees that participate in the Deputy Sheriffs Plans. The PPO plan is administered by Aetna, and the HMO option is administered by Group Health.

COBRA participants and pre-65 retirees can select from one of the two primary health plan options. COBRA participants can also elect to continue vision coverage through VSP and dental benefits through WDS. Retirees can continue vision benefits through VSP and elect to continue dental coverage through the WDS Retiree Dental plan.

For active employees, there are three out-of-pocket expense levels or tiers for each medical plan option. The out-of-pocket expense level is based on participation by the employee and the spouse/domestic partner in a wellness program called Healthy Incentives<sup>sm</sup> described later in this proposal. The tiers determine the employee's out-of-pocket expense levels not the benefits of the medical plans. Participation in the Healthy Incentives<sup>sm</sup> program by former employees enrolled in COBRA or the Retiree Medical plans is voluntary and does not impact their out-of-pocket expense level.

### **3.5 The Healthy Incentives<sup>SM</sup> Program**

King County implemented the Healthy Incentives<sup>SM</sup> program in 2006. At that time participants completed their first wellness assessment questionnaires (WAQ) and participated in individual action plans (IAP) which determined their plan tier level for 2007.

Participation in the Healthy Incentives<sup>SM</sup> program determines each member's benefit plan tier level for the following calendar year. Both medical plans have three plan levels or tiers of coverage, "Gold", "Silver", and "Bronze", each of which provide the same benefits but have different out-of-pocket costs for members. The Gold level has the lowest out-of-pocket costs for members and the Bronze level has the highest out-of-pocket costs. Participation in the three incentive levels is based on the member's participation in the Healthy Incentives<sup>SM</sup>

program. The three plan levels for Regular Employee Plan as they correspond to participation in the Healthy Incentives<sup>SM</sup> program are as follows:

INCENTIVE LEVEL	PARTICIPATION
Bronze	No participation in program
Silver	Completion WAQ
Gold	Completion of the WAQ and IAP

Out of pocket costs for the three incentive levels are as follows:

INCENTIVE LEVEL	OUT OF POCKET COSTS
<b>KingCare<sup>SM</sup> PPO (administered by Regence BlueShield)</b>	
Bronze	\$800 individual/\$2,400 family deductible 75% plan coinsurance \$1,200 out of pocket max per individual \$2,400 out of pocket max per family
Silver	\$600 individual/\$1,800 family deductible 75% plan coinsurance \$1,000 out of pocket max per individual \$2,000 out of pocket max per family
Gold	\$300 individual/\$900 family deductible 85% plan coinsurance \$800 out of pocket max per individual \$1,600 out of pocket max per family
<b>SmartCare Connect HMO (administered by Group Health Cooperative)</b>	
Bronze	\$50 office visit co-pay \$600 co-pay per emergency room admission \$3,000 out of pocket max per individual \$6,000 out of pocket max per family
Silver	\$35 office visit co-pay \$400 co-pay per emergency room admission \$2,000 out of pocket max per individual \$4,000 out of pocket max per family
Gold	\$20 office visit co-pay \$200 co-pay per emergency room admission \$1,000 out of pocket max per individual \$3,000 out of pocket max per family

### **3.6 COBRA and Retiree Medical Plans**

Employees who leave employment with King County and are eligible to enroll in COBRA or the Retiree Medical Plan continue the same benefit plan in which they were enrolled prior to termination. Unlike active employees, tier placement for COBRA and Retiree Medical Plan participants is selected by the plan member and is not dependent on participation in the Healthy Incentives<sup>sm</sup> program.

The premiums for COBRA and the Retiree Medical Plan increase as the out-of-pocket expense level decreases. For example, the gold level has the lowest out-of-pocket expense level, but the highest premium while the bronze level has the highest out-of-pocket expense level, but the lowest premium. As a result, each year during the annual open enrollment, COBRA and Retiree Medical participants can elect any plan and out-of-pocket expense level, i.e. Smart Care Connect<sup>sm</sup> or KingCare<sup>sm</sup> as the medical plan and the out-of-pocket expense level of gold, silver or bronze.

COBRA or Retiree Medical Plan participants can elect to participate in the Healthy Incentives<sup>sm</sup> program by enrolling in the program and paying an additional up-front fee. The COBRA/Retiree Medical Plan contractor will be required to collect that fee and notify the Healthy Incentives<sup>sm</sup> program Contractor of the enrollment. Notification will occur through an interface with the Healthy Incentives<sup>sm</sup> program Contractor.

Beginning January 1, 2013, the County would like to begin offering newly eligible COBRA and Retiree Medical Plan members the ability to change both their incentive level (gold, silver or bronze) as well as the opportunity to change their medical plan, KingCare<sup>sm</sup> or Smart Care Connect<sup>sm</sup> at the time of enrollment. This option would not be offered to dependents that enroll in COBRA independent of the employee. Dependents must be enrolled in the same plan as the employee.

### **3.7 Flexible Spending Accounts (FSA)**

King County provides Medical and Depend Care Flexible Spending Accounts (FSA) for its employees. The FSA plans provide coverage for employees and enrolled dependents including domestic partners and domestic partner children. Claims are submitted directly to and paid by the FSA contractor. The contractor is responsible for determining the eligibility of each claim and providing an appeals process for denied claims. The County determines an employee's eligibility to participate in the plan.

### **3.8 Potential Changes Effective in 2013 and Beyond**

The benefits that are currently in place for King County's employees and their spouses/domestic partners are subject to change through the labor bargaining process. As such, this RFP will seek to identify a proposer who is capable of administering the current plans and capable of administering new plans or plan designs that may be negotiated with the county's labor unions.

The county may, by issuing addenda, modify the requirements of the RFP, the evaluation criteria or elect to change the effective date of services based upon the outcome of labor negotiations. The county further reserves the right to change the eligible population based on bargaining unit or health plan selection as needed depending on the outcome of labor negotiations. Details on the eligible population and potential changes to the eligible population are included in Section 2.2 above.

### **3.9 Requirements – General**

The selected proposer shall be required to assign a dedicated account management team who must be available between the hours of 8 a.m. and 5 p.m. Pacific Local Time. The account management team must have accountability and authority to respond to and resolve inquiries, requests and issues raised by King County, to assure compliance with related rules and regulations and assure overall service quality. In addition the successful proposer must agree to and/or be able to meet the following requirements:

#### **A. Call Center**

1. Provide a dedicated, toll-free number with touch tone routing (if necessary) 24 hours a day, 7 days a week, 365 days a year that includes an Interactive Voice Response System (IVR) with a user-friendly menu that allows callers to opt out by pressing zero to reach a live representative or leave a message and call back number at every step in the IVR process.
2. With the exception of national holidays, call center employees with specific training and knowledge of King County benefits must be available from Monday to Friday between the hours of 8 a.m. and 5 p.m. Pacific Local Time to answer questions and resolve issues.
3. All messages must be returned within one business day from the time received.

#### **B. COBRA/Retiree Medical Plans**

1. Provide for electronic payment of premiums for COBRA/Retiree Medical plans from members' checking or savings accounts or payment from the member's pension plan.
2. Provide for individual selection of health benefit plan options, medical, dental and/or vision, for the employee and each eligible family member enrolling in COBRA or Retiree Medical Plans.
3. Provide for selection of medical plan and incentive levels that differ from those in which the employee was enrolled as an active employee at time of enrollment in COBRA or Retiree Medical plans.
4. Administer separate premium amounts for a variety of family options, i.e. employee only, employee plus spouse, employee plus children, employee plus family, spouse only, child only, etc.
5. Include HIPAA privacy notice in enrollment packet and HIPAA certification upon loss of coverage.
6. Administer termination of benefits in compliance with the rescission rules of the Health Care Reform Act regulations
7. Conduct open enrollment activities to coincide with King County's open enrollment.
8. Accept full responsibility for COBRA administration including indemnification of penalties assessed for noncompliance with state and/or federal regulations except for those functions expressly delegated to the County and set forth in the agreement

#### **C. Flexible Spending Accounts Administration Requirements**

1. Process FSA claims upon receipt and generate reimbursements within 5 business days.
2. Mail quarterly and year end statements to employees reflecting contributions, claims paid and current balances.

3. Perform discrimination testing at no additional charge to county.
4. Process claims over 2 plan years.
5. Mail confirmation letters to newly enrolled participants following receipt of file from King County.
6. Provide an accounting of annual forfeitures that includes reconciliation of payments made after December 31 each year for the prior year.
7. Provide on-line member service capabilities that include, but are not limited to, electronic claim filing, access to account history, claims and year to date status, and program information.

#### **D. Confidentiality, Privacy, and Security Requirements**

1. Ability to accommodate alternate ID numbers versus social security numbers for member identification.
2. Conform to King County Policies and Standards for privacy and security with regard to the administration of strong passwords (eight characters long and a combination of letters – upper and lower case- and numbers) for your member website.
3. Protect claims-related and Personal Health Information by an individual member log-on ID and password.
4. Demonstrate that a system backup is in place that is capable of supporting disaster recovery efforts, and a written and tested disaster recovery plan is maintained.
5. Must be able to send and receive encrypted email.

#### **E. Eligibility Reporting Requirements**

1. Maintain membership information in compliance with HIPAA standards for privacy, security and electronic data interchange.
2. Accept and maintain weekly employee eligibility and FSA contribution data via secured website.
3. Receive files and/or emails via secure email in addition to secure website
4. Accept email notifications that file has been sent and/or posted to secure website
5. Update systems and employee records within one business day from the date/time stamp on the XML file from King County
6. Post monthly XML roster file with all employees and dependents – file to include all information (names, addresses, date of birth, etc.) to a secure website to be retrieved by county by the last week of each month. File to be posted to secure website within two (2) business days following receipt of the last file for the month. County to be notified by email that file is available on secure website.

#### **F. Reporting Proposal Requirements**

1. Provide all reports and invoices electronically via portal access from a secure website.
2. Provide detailed reports with each invoice to King County that supports the fees. The report should be broken down by plan, and include a list of active member names, ID,

eligibility date and amount being charged per person and provide terminations during the report period.

3. Provide a monthly report by the end of the month following collection of previous month's premiums that details the collections and disbursement of COBRA/Retiree Medical Plan monies. The report should support the amount of premiums collected and paid to the dental and vision insurers and to King County's fully insured plans.
4. Provide a monthly census report of all COBRA, Retiree Medical and FSA enrollees.
5. Provide standard key reports and ad hoc reports accurately and within mutually established dates and response times via posting on a secured web site.
6. Provide access to web-enabled on-line reporting tools.
7. Use Extensive Markup Language (XML)

#### **G. Financial, Billing and Banking Requirements**

1. Ability to go back one year (on a 12-month rolling basis) for retroactivity.
2. Provide option of Automated Clearing House (ACH) or wire transfer for payments and/or remittances.
3. Reconcile all financial payments due to King County (e.g., COBRA/Retiree Medical Plan premiums for self funded plans, FSA forfeitures, missed Performance Guarantees, etc.) and pay via check or ACH directly to King County.
4. Provide monthly banking reconciliation services.
5. Maintain employee funds for the FSA and DCAP plans in a segregated trust account for the benefit of the county employees.
6. Provide accounting, management and reconciliation reports for all deposits and claim activity.

#### **H. Communication**

1. Assigned account management team to review and approve SPD and SMM and other documents on an as-needed basis for accuracy and compliance with related regulations as part of the basic costs.
2. Provide customized member communications, approved by King County, that include, but are not limited to, brochures and bulletins.
3. Reimburse King County for the proportional costs associated with producing their own SPDs and SMMs.
4. Ensure that people with limited English proficiency and those with disabilities have access to communication services that enable members to utilize the phone lines and receive assistance completing required enrollment forms.
5. Work with King County to promote FSA and DCAP plans to County employees prior to and during open enrollment to increase enrollment in plan.



### **3.10 Proposal Questionnaires**

The proposal questionnaires are split up into discrete sections based on the services and requirements of the RFP outlined below and described in Section 3.9 above. The questionnaires corresponding to each component of administration for the COBRA, Retiree Medical Plan, and FSA plans are as follows:

1. Exhibit A – Company Background Questionnaire
2. Exhibit B – Implementation Requirements Questionnaire
3. Exhibit C – Member Services Questionnaire
4. Exhibit D – COBRA/Retiree Medical Questionnaire
5. Exhibit E – Health and Dependent Care FSAs Questionnaire
6. Exhibit F -- Communications Questionnaire
7. Exhibit G – Financial & Reporting Questionnaire
8. Exhibit H – Price and Performance Guarantees Form

All proposers shall submit each of the above listed questionnaires, Exhibits A – H with their proposals. Failure to submit all questionnaires may render the proposal unresponsive. The county will not consider proposals for any sections of the RFP as stand-alone services.

#### **A. Questionnaire Instructions**

Each of the questionnaires included with this RFP pose questions about your organization and your capabilities to provide the specific services required to administer each requirement of the program. Proposers are expected to thoroughly respond the questions in each section providing exceptions where appropriate. The questions marked with the “Minimum Requirement” indicator establish a baseline of services required to meet the needs of King County as they relate to the specific programs and plans. The county may, at its discretion, eliminate proposals from further consideration based upon responses to the questions identified as “Minimum Requirements” alone. Note that responses to all questions must be contained in the tables provided. In the event that attachments are required to supplement your response to a given question, the title of the attachment should be included along with the response to the question in the provided table. Attachments referenced within the questionnaire without addressing the question in the provided tables will not be considered. The end of each questionnaire includes a list of required attachments to support your responses to the questions for that section of the RFP. Each section of the RFP must include a completed questionnaire and must be submitted with the required supplemental attachments to be considered complete and responsive.

#### **B. Executive Summary**

Each proposal submitted in response to this RFP shall include a two page Executive Summary of your proposal for the administration of the King County COBRA, Retiree Medical and FSA programs. Executive Summaries should introduce your organization, describe your understanding of the programs and the related goals, and identify the reasons that King County should select your proposal to achieve those goals.

#### **C. RFP Exhibits**

Each of the RFP Exhibits listed below are referenced within the RFP and are required for reference in order to complete the various RFP questionnaires. These Exhibits have been posted to the King County procurement website along with each of the Questionnaires and other RFP documents.

1. Exhibit I – King County Business Associate Agreement
2. Exhibit J – King County Employee and Third Party Policy for Information Technology Security and Privacy
3. Exhibit K – King County Acknowledgement of IT Security Responsibilities and Confidentiality Guidelines
4. Exhibit L – King County Password Management Policy
5. Exhibit M – King County logos

### **3.11 Proposal Content Requirements**

#### **A. Contents**

Each submitted proposal shall contain the documents listed below. Proposals should include section tabs with the names of each section listed which should correspond to the titles in the list as follows:

1. Executive Summary
2. RFP Questionnaires and Attachments
  - Exhibit A – Company Background Questionnaire
    - Attachment B – Audited financial statements
    - Attachment C – Account management organizational chart
    - Attachment D – Proposed annual account management satisfaction survey
    - Attachment E – Red-lined Business Associate Agreement (if applicable)
  - Exhibit B – Implementation Requirements Questionnaire and Attachments
    - Attachment F – Detailed implementation plan
    - Attachment G – Implementation Performance Guarantees
    - Attachment H – Sample communications plan
    - Attachment I – Operations and customer service organizational chart
    - Attachment J – Proposed post-implementation survey
    - Attachment K – Administrative Manual outline detailing proposed contents of final manual
  - Exhibit C – Member Services Questionnaire and Attachments
    - Attachment L – One year history of call center statistics including call volume, dropped/abandon calls, average wait time, average call time and average answer time

- Attachment M – Location and size of customer service center that will administer the plans. Include the ratio of members to customer service representatives and the call routing procedures
- Attachment N – Brief description of staffing and training procedures including plan for training designated customer service team assigned to King County
- Attachment O – Brief description of process for tracking member issues, complaints and/or grievances from initial call to resolution
- Attachment P – Provide the URL for your member service website and a temporary login and password to be used for demonstrating and testing the member service website to determine its capabilities. Provide 6 test user names and passwords.
- Exhibit D – COBRA/Retiree Medical Questionnaire
  - Attachment Q – Provide a brief description of your procedures for assuring that a COBRA/Retiree medical enrollment packet was mailed to a newly eligible participant
- Exhibit E – Health and Dependent Care FSAs Questionnaire
  - Attachment R – Brief description of your appeals process for denied FSA claims including any second level appeal procedures
  - Attachment S – Provide claim adjudication statistics for 2010 and 2011 that includes financial accuracy (percent of dollars paid correctly), overall accuracy, turnaround time for payment of Health Care FSA claims and Dependent Care FSA claims. Include your standard expectation for each item
  - Attachment T – Provide a description of the steps you take to attempt to reduce year-end forfeitures of FSA contributions for both Medical and Dependent Care FSA accounts
- Exhibit F – Communications Questionnaire
  - Attachment U – Provide a description of your participant communication capabilities
  - Attachment V – Provide sample communications material for promoting FSA participation
- Exhibit G – Financial & Reporting Questionnaire
  - Attachment W – Describe your on-line reporting
  - Attachment X – Describe other available reports that will assist in the accounting and management of these
- Additional brochures, booklets or other sales materials may be sent separately from proposals but should not be included along with the proposal itself.
- 3. Exhibit H – Price and Performance Guarantees Form
- 4. RFP Forms and Other Attachments

- RFP Forms – The RFP identifies a number of required forms and attachments which must be included with your proposal. See Section 1.15 Proposal Content Requirements, Item A.
- Sample Contract – Attachment A is the sample contract for the services outlined in this RFP. A red-lined or tracked-changes copy of the sample contract shall be submitted with your proposal and accompanied by a cover letter detailing the rationale for edits on a section by section basis. The cover letter should be written by the representative within your organization who will be responsible for negotiation of the final contract language in the event that your proposal is selected for award of the contract.

## B. Copies

### 1. Paper Copies of Proposals

Proposers shall submit three (3) bound paper copies of the proposal and attachments. One original copy of the proposal shall be unbound and marked “ORIGINAL” to facilitate reproduction. Paper copies of the proposal shall be limited to the documents listed in Section 1.15 above and shall not include additional brochures, booklets or other sales materials that are not specifically requested in the RFP.

### 2. Electronic Copies of Proposals

In addition to the paper copies, proposers shall submit 8 CD-ROM discs or sets of discs (as required) with electronic copies of the full proposal including all requested exhibits and attachments, in their native formats. All files on the discs shall be clearly labeled to match paper copies. PDFs of proposer-created documents are acceptable.

### 3. Supplemental Information

The county’s preferred method is to receive supplemental information in electronic format. Electronic copies of additional brochures, booklets or other sales materials that are not specifically requested in the RFP may be submitted on separate discs in suitable format and labeled as such. Label these discs as ‘Supplemental Information’.

Paper copies of additional brochures, booklets or other sales materials, not available in electronic format, and are not specifically requested in the RFP may be submitted unbound, separate than the proposal and labeled as ‘Supplemental Information’.



**THIS CONTRACT #** \_\_\_\_\_ ("Contract") is entered into by **KING COUNTY**, Washington,, (the "County"), and \_\_\_\_\_ (the "Contractor"), whose address is \_\_\_\_\_. The County is undertaking certain activities related to, \_\_\_\_\_ and, the County desires to engage the Contractor to provide Work in connection with such undertakings of the County,

**NOW, THEREFORE**, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

**I. CONTRACT DOCUMENTS**

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

4. Contract Amendment(s)
5. Contract, which consists of this page, the Terms and Conditions, and the following:
  - ☐ Scope of Work .....Exhibit A
  - ☐ Price Attachment.....Exhibit B
  - ☐ Consultant Disclosure Form (if applicable)..... Exhibit C
  - ☐ Certificate(s) of Insurance and Policy Endorsement ..... Exhibit D
  - ☐ Other Exhibits and attachments (if applicable)
6. Request for Proposal (as modified by any addenda)
7. Contractor's Proposal

**II. CONTRACT TERM**

This Contract shall be effective when countersigned by King County and shall expire on \_\_\_\_\_, unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

**III. CONTRACT AMOUNT**

The County shall reimburse the Contractor upon Acceptance of the Work specified in this Contract in an estimated annual amount payable as set forth in Exhibit B.

**COMPANY NAME**

---

Authorized Signature

---

Name and Title (Print or Type)

Date

Accepted: \_\_\_\_\_

**KING COUNTY**

---

Authorized Signature

---

Name and Title (Print or Type)

Date

Accepted: \_\_\_\_\_

Approved as to form only:

King County Prosecuting Attorney

## TERMS AND CONDITIONS

### SECTION 4 DEFINITIONS

#### 4.1 Definitions

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: A written determination by the County that the Contractor has completed the Work in accordance with the Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or Scope of Work, signed by both parties, with or without notice to the sureties.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Work under the Contract.

Day: Calendar day.

KCC: The King County Code.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.

RCW: The Revised Code of Washington.

Scope of Work (SOW): An exhibit to the Contract consisting of a written description of the Work to be performed.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

## **SECTION 5        GENERAL PROVISIONS**

### **5.1     Administration**

The Contractor shall be responsible for performing the Work. The County is not a party to defining the division of Work between the Contractor and its Subcontractors, if any.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform the Work under this Contract.

### **5.2     Acceptance of Work**

Upon completion of the Contract or a purchase order issued under the Contract, the Contractor shall give the County written "notice of completion" of Work. The County shall review the Work for Acceptance. In addition, the County may Accept Work by phase or milestone. In such case, the Contractor will give the County written "notice of completion" of Work related to a specific phase or milestone following the Contractor's completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

### **5.3     Warranty**

Contractor warrants that the Work shall in all material respects conform to the requirements of this Contract. Contractor further warrants that qualified professional personnel with in-depth knowledge shall perform the Work in a timely and professional manner, and that the Work shall conform to the standards generally observed in the industry for similar Work.

### **5.4     Payment Procedures; Prompt Payment of Subcontractors**

For Work Accepted by the County the Contractor shall furnish invoices to King County Accounts Payable, M/S MLK-ES-0320, 401 – Fifth Avenue, Seattle, WA 98104. All invoices shall include: purchase order and/or contract number, invoice date, number, and total. For each item invoiced, provide the complete description of the products, services, phases or milestones Accepted, hours worked and Contract hourly rates, or authorized fees.

The County will not be bound by prices contained in an invoice that are higher than those in Exhibit B, or if not used as part of this Contract, then the current price list for this Contract approved by the County. Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the County.

### **5.5     Pricing**

Prices shall remain firm for the duration of the Contract. The Contractor may request a price change(s) in writing delivered to the county. The Contractor shall provide documentation satisfactory to the County in support of its request, such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bremerton area, or a manufacturer's published notification of price change(s). The County reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about



modifications to the request, or deny the request in its entirety. Any change in pricing granted by the County shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

## **5.6 Shipping Charges**

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges

## **5.7 Contract Amendment**

All changes to the Contract shall be made in writing through a Contract Amendment. No oral statement or other conduct by the County shall change or modify the Contract. The County may perform an analysis of cost, price or schedule to determine the reasonableness of the proposed change to the Contract.

## **5.8 Changed Requirements**

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through Section 5.7, Contract Amendment.

## **5.9 Taxes, Licenses, and Certificate Requirements**

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

## **5.10 Notices**

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

<b>KING COUNTY</b>	<b>CONTRACTOR</b>
Project Manager -	
Seattle, WA	
206-	
<a href="mailto:xxxxxx@kingcounty.gov">xxxxxx@kingcounty.gov</a>	

## **SECTION 6        LEGAL RELATIONS; INDEMNITY AND INSURANCE**

### **6.1        Independent Status of Contractor**

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

### **6.2        Indemnification and Hold Harmless**

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Section 6.2, or to enforce the provisions of this Section 6.2, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this Section 6.2 shall affect and/or alter the application of any other section contained within this Contract.

### **6.3        Insurance Requirements**

Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability, errors and omissions, will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Stop-Gap; Employers Liability: \$1,000,000
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employee Dishonesty Coverage: \$250,000

B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The County, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

All Policies:

1. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
2. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor
3. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.

4. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.**

D. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

## **SECTION 7      CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES**

### **7.1      Conflicts of Interest and Non-Competitive Practices**

- A. Conflict of Interest - By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict.
- B. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Contractor represents that:
  1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
  2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.
- C. Disclosure of Current and Former County Employees - To avoid any actual or potential conflict of interest or unethical conduct:
1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
  2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract.
  3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

## **SECTION 8 RECORDS AND AUDITS**

### **8.1 Retention of Records, Audit Access and Proof of Compliance with Contract**

#### **A. Retention of Records**

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

#### **B. Audit Access**

The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

### **8.2 Audit Exception**

The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

### **8.3 Federal Funding Audit**

If the Contractor expended a total of \$500,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than \$500,000.00. The Contractor shall provide one copy of the audit report to each County division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor's fiscal year.

### **8.4 Public Records Requests**

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

## **SECTION 9 INTELLECTUAL PROPERTY**

### **9.1 Patents, Copyrights and Rights in Subject Data**

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

## **9.2 Nondisclosure of Data**

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the prior express written approval of the County.

## **9.3 Non-Disclosure Obligation**

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

## **SECTION 10 NONDISCRIMINATION**

### **10.1 Nondiscrimination and Equal Employment Opportunity**

#### **A. Nondiscrimination in Employment**

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

#### **B. Equal Employment Opportunity Efforts**

The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

Ref: KCC 12.16.020.

#### **C. Nondiscrimination in Subcontracting Practices.**

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

D. Compliance with Laws and Regulations.

The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

E. Required Submittals During Work.

The Contractor shall collect, enter, submit and update the submittals listed below for itself, its Subcontractors and any sub tier Subcontractors and suppliers to BDCC using the Contracts and Apprenticeship Report Tracking Services (CARTS) online reporting website located at <http://www.kingcounty.gov/bdcc>. Report forms are available on the website. Assistance may be obtained by contacting BDCC staff at 206-263-9734.

1. Subcontractor List. The Contractor shall create and maintain a master list of all Subcontractors on this Contract, the Contractor shall continually maintain the Subcontractors and Suppliers.
2. Contractor Payments. The Contractor shall enter and submit the amount received from the County for itself and the amounts paid by the Contractor to all Subcontractors, including Certified SCS Firms. Entries shall be entered in CARTS on a monthly basis.
3. Final Affidavits of Amounts Paid. Upon completion of the Work and as a condition precedent to final payment, the Contractor shall upload a Final Affidavit of Amounts Paid electronically using CARTS. Identify amounts paid to each firm that performed Work on this Contract.

F. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the



basis of such disability. Failure to comply with this Section 10.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

- G. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

## **SECTION 11 CLAIMS AND APPEALS; DISPUTE RESOLUTION**

### **11.1 Claims and Appeals**

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Buyer and Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract documents. The County reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager on claims for additional time or compensation shall be a condition precedent to litigation.

At all times, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this Section 8.1 as to any claim and appeal shall operate as a waiver and release of that claim and appeal and an acknowledgment of prejudice to the County.

### **11.2 Mediation and Arbitration**

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through the required claims and appeal process set forth

in Section 11.1, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative dispute resolution process prior to commencing litigation.

### **11.3 Applicable Law and Forum**

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

## **SECTION 12 TERMINATION**

### **12.1 Termination for Convenience/Default/Non-Appropriation**

#### **A. Termination for Convenience**

This Contract may be terminated by the County without cause, in whole or in part, upon providing the Contractor ten (10) Days' advance written notice of the termination. If the Contract is terminated pursuant to this Section 12.1.A, the County will be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination.

#### **B. Termination for Default**

If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A "notice to cure" shall be served on the Contractor by certified or registered first class mail in accordance with Section 5.10. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract by serving a "notice of termination" in accordance with Section 5.10 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

#### **C. Termination for Non-Appropriation**

1. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

If the Contract is terminated pursuant to this Section 12.1.C: 1) the County shall be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination; and, 2) the Contractor shall be released from any obligation under this Contract affected by the termination or a related purchase order to provide further Work pursuant to the Contract.

2. Notwithstanding any provision to the contrary, funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year.

## **SECTION 13 MISCELLANEOUS**

### **13.1 Other Public Agency Orders**

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

### **13.2 Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or notation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), section 6.1.3 is followed. If an assignment is approved, it shall be effective upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

### **13.3 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

### **13.4 Recycled Products Policy**

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Ref: KCC 10.16 & King County Executive Policy CON 7-1-2.

### **13.5 HIPAA – Protecting Patient Privacy**

The Work under this Contract may require compliance with “The Health Insurance Portability and Accountability Act of 1996” (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

### **13.6 No Third Party Beneficiary**

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

### **13.7 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

### **13.8 Non-Waiver of Breach**

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

## **SECTION 14 FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

This Contract shall be partially funded by the Federal Transit Administration (FTA). The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as are the requirements of the Master Agreement between King County and the U.S. Department of Transportation, including all “flow down” provisions to third party Contractors, Subcontractors and or suppliers are hereby incorporated by reference. Unless stated otherwise, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

### **14.1 Changes in Federal laws, Regulations, Policies and Administrative Practices**

New federal laws, regulations, and directives may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

Ref: FTA Master Agreement MA (16), 10-1-2009, Section 2(c).

### **14.2 Federal Changes**

The Contractor agrees to comply with all applicable FTA laws, regulations and directives, including without limitation, those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to comply shall constitute a material breach of this Contract.

Ref: 49 CFR Part 18 and FTA Master Agreement MA (16), 10-1-2009, Section 2(c).

### **14.3 No Federal Government Obligations to Third Parties**

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

Ref: FTA Master Agreement MA (16), 10-1-2009, Section 2(f).

### **14.4 Equal Employment Opportunity**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor

further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Ref: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 621-634; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Parts 1625 and 1630; 41 CFR § 60-1.4, Title IX of the Education Amendments of 1972, as amended, 20 USC §§ 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, " 49 CFR Part 25.

#### **14.5 Title VI Compliance**

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time. The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations.

Ref: 49 CFR Part 21.19.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

- A. Nondiscrimination—49 CFR Part 26. The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation ("USDOT") — assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. Prompt Payment. The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Contract no later than thirty (30) Days from the receipt of each payment the Contractor receives from the County. The Contractor agrees further to return retainage payments to each Subcontractor within thirty (30) Days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE Subcontractors.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of

the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

- D. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, King County shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - 2. Cancellation, termination, or suspension of the contract, in whole or in part.
- E. Incorporation of Provisions. The Contractor shall include the provisions of paragraphs A through D in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- F. Contractor's List. Contractor is requested to submit the name, address, DBE/Non-DBE status, annual gross receipts, and age of all Subcontractors and suppliers bidding or quoting on DOT-assisted projects. **Compliance with the requirement to report the Contractor's List information is a matter of responsibility.** Contractor is requested to submit the Contractor's List prior to Contract Work.

#### **14.6 Disadvantaged Business Enterprise Requirements.**

- A. DBE Participation. The County has not established a DBE goal for this Contract. In accordance with this section, the County has an overall annual DBE goal of thirteen percent (13%) for FTA assisted projects. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor accurately DBE program compliance.
- B. Reporting Requirement. The USDOT requires that the Contractor report any actual DBE participation on this Contract to enable the County to monitor DBE participation accurately and for reporting purposes.
- C. DBE Eligibility. A DBE means a business certified as a DBE by the Washington State Office of Minority and Women's Business Enterprise (OMWBE).
- D. DBE Listing. A Directory of DBE firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available online at the following website address: <http://www.omwbe.wa.gov/directory/directory.htm> Telephone the OMWBE at 360-753-9693. **All DBE firms must be certified by OMWBE.**
- E. Counting DBE Participation. The County will count DBE participation toward its annual overall DBE goal as provided for in 49 CFR 26.55.
  - 1. DBE Contractor. The County will only count the Work a DBE Contractor performs with its own forces as well as the Work performed by DBE Subcontractors with their own work forces.

2. Joint Venture. When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces.
3. Commercially Useful Function. The County will count expenditures to a DBE contractor only for DBEs who perform a commercially useful function on that contract.
  - a. DBE performs a commercially useful function when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself.
  - b. DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DBE participation.
    - (1) A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its contract, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved.
4. Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
  - a. **Manufacturer**. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  - b. **Regular Dealer**. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
    - (1) To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - c. A Person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (4)(b), if the Person both owns and operates distribution equipment for the products. Any



supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. The cost of the materials and supplies themselves shall be counted.

5. Purchases from a DBE. With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

#### **14.7 Disadvantaged Business Enterprise and Other Small Business Participation**

The County encourages Contractors to carry out the following steps to facilitate DBE and other small business participation, which may be either on a direct basis in response to this solicitation or as a Subcontractor to a bidder.

- A. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small businesses that have the capability to perform the Work of the Contract.
- B. Select portions of the Work to be performed by Subcontractors to increase the likelihood that DBE and other small businesses' goals will be achieved
- C. Provide interested Subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. Negotiate in good faith with interested DBEs and other small businesses.
- E. Avoid rejecting DBEs and other small businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to obtain DBE and other small business participation.
- F. Make efforts to assist interested DBEs and other small businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Make efforts to assist interested DBEs and other small businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively use the services of available minority/women community organizations, Contractors' groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small businesses.

#### **14.8 Audit and Inspection of Records**

In the case of all negotiated Contracts and Contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposal procedures, Contractor agrees that the County, the Comptroller General of the United

States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect and reproduce as needed all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

Ref: 49 USC § 5325(g); 18 CFR Part 18.36 (i); 49 CFR Part 633.17; and FTA Master Agreement MA (16), 10-1-2009, Section 8 (c) and (d).

#### **14.9 Privacy**

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract shall make this Contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract that involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

#### **14.10 Access Requirements for Individuals with Disabilities**

The County and the Contractor are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities receiving from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;

- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

#### **14.11 Interest of Members of or Delegates of Congress**

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.

#### **14.12 Certification Regarding Debarment, Suspension and Other Responsibility Matters**

This Contract is a covered transaction for purposes of 2 CFR part 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR 1200, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **14.13 Disclosure of Lobbying Activities**

Contracts in excess of \$100,000 require a Certificate of Lobbying Activities, to be completed and submitted to the County with the proposal, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

Ref: 49 CFR Part 20, modified as necessary by 31 USC § 1352.

#### **14.14 False or Fraudulent Statements or Claims**

The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 *et seq.*, and/or 49 USC § 5307(k)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

#### **14.15 Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*, and 49 CFR Part 18.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

#### **14.16 Air Pollution**

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria shall be met. This evidence and related documents shall be retained by the manager for on-site examination by FTA.

#### **14.17 Environmental Requirements**

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

##### **A. Environmental Protection**

The Contractor agrees to comply with the applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500, *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

##### **B. Air Quality**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to 42 USC § 7606. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Ref: 42 USC § 7606; 40 CFR Part 51, Subpart T; 40 CFR Part 85; 40 CFR Part 86; and 40 CFR Part 600.

##### **C. Clean Water**

The Contractor agrees to comply with all applicable laws, regulations, and directives issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251-1377. The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300f through 300j-6.

The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Ref: 33 USC § 1251.

**F. Use of Public Lands**

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used unless the FTA makes the specific findings required by 49 USC § 303.

**H. Mitigation of Adverse Environmental Effects**

The Contractor agrees that if the Work should cause adverse environmental effects, the Contractor shall take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622, 23 CFR 774.

**I. Wild and Scenic Rivers**

The Contractor agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 USC §§ 1271 -1287, relating to protecting components of the national wild and scenic river system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 CFR Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 CFR 8350.

**14.18 Preference for Recycled Products**

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the United States EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

**14.19 Patent Rights**

If any invention, improvement, or discovery of the Contractor or any of its Subcontractors is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States or any foreign country, the Contractor agrees to notify the County immediately and Provide a detailed

report in a format satisfactory to the FTA. The rights and responsibilities of the Contractor and the County with respect to such invention, improvement or discovery shall be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, academic institution, individual), the County and the Contractor agree to take the necessary actions to Provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor also agrees to include the requirements of this section in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance Provided by FTA.

FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Contract to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 CFR Parts 18 and 19, Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 USC §§ 200 *et seq.*, which applies to patent rights developed under a research project.

Ref: 49 CFR Parts 18 and 19, 37 CFR Part 401, USC §§ 200 *et seq*

#### **14.20 Rights in Data and Copyrights**

Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

##### **A. Federal Rights in Data and Copyrights**

The Contractor agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this subsection.

##### **B. License Fees and Royalties.**

FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Work to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 CFR Parts 18 and 19, the Contractor has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 USC §§ 200 *et seq.*, which applies to patent rights developed under a research project.

##### **C. Restrictions on Access to Patent Rights**

Nothing in this subsection pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

##### **D. Data Developed Without Federal Funding or Support**

In connection with the Contract, the Contractor may find it necessary to provide data to the County developed without any Federal funding or support by the Federal Government. The requirements of Federal Rights in Data and Copyrights do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with this Contract. Nevertheless, Contractor understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

#### **14.21 Termination Provisions Required**

All Contracts and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it shall be effected and the basis for settlement.

Ref: FTA Circular 4220.1F § IV.2.b.

#### **14.22 Breach Provisions Required**

All Contracts in excess of \$100,000 shall contain contractual provisions or conditions that shall allow for administrative, contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all subcontracts in excess of \$100,000 awarded under this Contract.

Ref: FTA Circular 4220.1F, § IV.2.B

#### **14.23 Substance Abuse**

Contractor and its subcontractors agrees to comply with U.S. OMB Guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32, that implement the Drug-Free Workplace Act of 1988, 41 USC §§ 701 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated, and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, that implement 49 USC § 5331.

### **END OF TERMS AND CONDITIONS**